

UNPUBLISHED

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

UNITED STATES OF AMERICA,
Plaintiff-Appellee.

v.

No. 98-4874

TIMOTHY ROMERO BENTON,
Defendant-Appellant.

Appeal from the United States District Court
for the Eastern District of Virginia, at Norfolk.
Raymond A. Jackson, District Judge.
(CR-98-36)

Submitted: June 22, 1999

Decided: July 12, 1999

Before WILLIAMS, MICHAEL, and TRAXLER, Circuit Judges.

Affirmed by unpublished per curiam opinion.

COUNSEL

B. Thomas Reed, Norfolk, Virginia, for Appellant. Helen F. Fahey,
United States Attorney, Darryl J. Mitchell, Special Assistant United
States Attorney, Norfolk, Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit. See
Local Rule 36(c).

OPINION

PER CURIAM:

Appellant Timothy Benton appeals his conviction and 147 month sentence for one count of conspiracy to commit bank robbery in violation of 18 U.S.C. § 371 (1994); one count of armed bank robbery by force and intimidation in violation of 18 U.S.C.A. §§ 2113(a), (d) (West Supp. 1999); and using and carrying a firearm during and in relation to a crime of violence in violation of 18 U.S.C.A. § 924(c)(1) (West Supp. 1999). On appeal, Benton contends that: (1) the district court abused its discretion in denying his motion for an evaluation to determine his mental competency and (2) the court erred in finding that Benton obstructed justice by perjuring himself at trial. We have reviewed the parties' briefs, the record, and the applicable law, and affirm.

Although the district court characterized Benton's motion as one made under "42 U.S.C. 4244(a)" when in actuality, the motion sought an evaluation to determine mental competency pursuant to 18 U.S.C. § 4241 (1994), the court made findings as to Benton's competency and determined, based upon the record as a whole, that there was no evidence indicating a competency hearing was warranted. See United States v. Mason, 52 F.3d 1286, 1290 (4th Cir. 1995). Because the lower court's determination made it clear that the court considered all factors appropriate to a consideration of a motion made under 28 U.S.C. § 4241 and would not have granted Benton's motion under the standard applicable to that statute, we conclude the district court did not abuse its discretion in denying the motion. Furthermore, the court did not err in finding Benton obstructed justice by perjuring himself at trial and in enhancing Benton's offense level based upon those findings. See U. S. Sentencing Guidelines Manual § 3C1.1 (1997).

Accordingly, we affirm Benton's conviction and sentence. We grant Benton's unopposed motion to submit the case on briefs because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

AFFIRMED